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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,922	02/02/2004	George Gonzalez	GONZAL-42510	1679

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EXAMINER	
BERTRAM, ERIC D	

ART UNIT	PAPER NUMBER
3766	

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/770,922	GONZALEZ, GEORGE	
	Examiner	Art Unit	
	Eric D. Bertram	3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 May 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-54* is/are pending in the application.

4a) Of the above claim(s) *10-16 and 24-54* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 17-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/2/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Claims 1-9 and 17-23, readable on Species I, Species A and Sub-species ii, in the reply filed on 5/4/2006 is acknowledged.

2. Claims 10-16 and 24-54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/4/2006.

Priority

3. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

Information Disclosure Statement

4. The information disclosure statement (IDS) submitted on 2/2/2004 was filed in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Specification

5. The disclosure is objected to because of the following informalities: On page 1, line 8 of the specification, --now US Patent 6,685,729-- should be added immediately following "July 24, 2001".

Appropriate correction is required.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-9 and 17-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,685,729. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-9 of current application merely describe a process that is broader in scope than the claims of the patented case. Furthermore, claims 17-23 would be obvious over the claims of the '729 patent since claim 4 of the '729 patent discloses that a "combined test comprises performing at least two...motor function tests simultaneously."

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-9 and 17-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. Claims 1 and 17 recite the limitation "the area" immediately following "resetting nerve supply to". There is insufficient antecedent basis for this limitation in the claim. For examination purposes, it is assumed that "the area" refers to an area identified as having a neurological dysfunction.

10. Since claims 2-9 and 18-23 depend from claims 1 and 17, they are rendered indefinite by their association.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-4, 9, 17-19, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Allum (US 6,063,046). Allum discloses a method for the diagnosis and rehabilitation of balance disorders that performs a combined test on a patient. By using therapeutic device 26, a combined test is administered which starts at the base (feet) of the body and inherently moves towards the head, during which multiple muscles are stimulated simultaneously on the left and right sides of the body, and the results of the test are used to diagnose a neurological dysfunction, which in this case is a structural component of the dysfunction, specifically a CNS lesion (Col. 5, lines 20-60). The combined test could further add a visual test in addition to the muscle tests (Col. 15, lines 17-24). By performing multiple combined tests as a form of rehabilitation, physical function of the patient is continuously tested and corrected until no dysfunction is detected.

13. Regarding claim 4, the therapeutic device 26 physically manipulates the skin of the patient, which inherently entraps a vein, artery or nerve associated with the dysfunction.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 1, 5-7, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allum in view of Walker (US 4,671,285). Allum, as described above, discloses the applicant's basic invention with the exception of restoring neurological function by resetting nerve supply through stimulation with a light-generating device. Attention is directed to the secondary reference of Walker, which discloses the use of monochromatic light for the treatment of neurological dysfunction. Walker describes applying monochromatic with a laser to nerves of the central nervous system in order to reset the nerve supply to a functional level (Col. 3, lines 60-64). Furthermore, Walker

teaches that applying monochromatic light results in a significant decrease in pain in the area of the neurological dysfunction. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the treatment of Allum by adding the light treatment of Walker in order to expedite the correction of the neurological dysfunction and increase pain in the patient.

17. Claims 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allum in view of Walker and further in view of Jobsis (US 4,281,645). Walker, as described above, discloses the applicant's basic invention with the exception of the light-generating device being a light emitting diode (LED). Attention is directed to the reference of Jobsis, which teaches that monochromatic light can be produced by an LED for medical applications (Col. 14, lines 10-15). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the method of Walker by replacing the laser with an LED since the two were known art equivalents for producing monochromatic light, as taught by Jobsis.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peterson et al. (US 6,267,733) discloses a method for treating neurological dysfunction by applying a combined test.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is 571-272-3446. The examiner can normally be reached on Monday-Thursday and every other Friday from 9-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDB